

**DONNA MORRIS, individually and as
Next friend of WILLIAM MORRIS, III,

Plaintiff,

v.

CITY OF SAPULPA, JAMIE NOE,
JAMES PRINE, and MIKE HEATHERLY,

Defendants.**

**CITY OF SAPULPA, JAMIE NOE,
JAMES PRINE, and MIKE HEATHERLY,
Defendants.**

Now before the Court is plaintiff's Motion to Reconsider Stay of Trial (Dkt. # 42). On May 6, 2011, upon motion by defendants, the Court entered an Order staying the scheduled trial in this case, Dkt. # 41, pending defendants' appeal of the Court's decision denying qualified immunity to defendant Jamie Noe. Dkt. # 37. Plaintiff then filed a motion for the Court to reconsider the stay of trial on the ground that defendants' appeal involves questions of fact only, and is therefore not a proper interlocutory appeal under Johnson v. James, 515 U.S. 304 (1995).

Johnson held that a court's denial of qualified immunity is appealable only as to issues of law; that is, whether an action constitutes a constitutional violation, and whether the law surrounding such violation was clearly established. 515 U.S. at 317-18. To the extent that defendants' appeal would require review of the Court's determination as to the existence of genuine issues of material fact, the appeals court lacks jurisdiction. See Howards v. McLaughlin, 634 F.3d 1131, 1138-39 (10th Cir. 2011). Here, however, defendants seek to appeal questions of law as to whether Noe violated clearly established constitutional law, whether Noe was reasonable in the actions he took, and whether reasonable suspicion existed for the detention and probable cause existed for the arrest

of William Morris III. Dkt. # 40, at 2. Therefore, it is a proper matter for interlocutory appeal, and stay of the proceedings is proper pending conclusion of defendants' appeal. Stewart v. Donges, 915 F.2d 572, 576 (10th Cir. 1990).

IT IS THEREFORE ORDERED that plaintiff's Motion to Reconsider Stay of Trial (Dkt. # 42) is **denied**.

DATED this 9th day of May, 2011.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT